

Oregon

I. Background

The Oregon Division of Child Support (Division) is housed within the Oregon Department of Justice. The program is state-administered. The State Operations Section consists of 15 localized DCS branches providing child support services through offices located throughout the State. This section also contracts with nine County District Attorney offices to provide full child support services.

According to unaudited data, at the end of federal fiscal year 2006, Oregon's child support program had 251,142 open IV-D cases¹ and 709 full-time equivalent staff.² In that year, Oregon scored above the national average on three of the five federal performance measures (current collections, arrearage collections, and cost effectiveness). The state was lower than the national average in two performance measures (paternity and support order establishment).

Oregon began its transition to an administrative process cautiously. In 1979 it enacted a quasi-administrative process for the establishment of orders. The agency had the authority to issue administrative notices, which served the same function as pleadings and motions in court. An assistant attorney general had to sign the Notice and Finding of Financial Responsibility. The agency had to personally serve the administrative pleadings. If there was any challenge to the Notice and Finding, the issue had to be resolved through a hearing in circuit court. This quasi-administrative process differed from the court process, in which parties received a court date after filing pleadings with the court. Because the court date was set prior to service, the court process resulted in many non-appearances and multiple continuances if service was unsuccessful. The courts were amenable to moving toward a more administrative process because it helped relieve the court dockets.

The next stage in Oregon's move to an administrative process was a change in how challenges were heard. Rather than court hearings, the legislature authorized hearings before an administrative law judge (ALJ). The ALJ is employed by a different agency from the Child Support Program in order to remove any perception of a conflict of interest. This Office of Administrative Hearings now coordinates administrative hearings for most state agencies. Any child support appeal from an ALJ decision is a *de novo* review before the circuit court.

The third change related to the administrative notice. Rather than an attorney signature, the Division authorized signature by lay staff. Initially, the Division had a branch manager sign the Notice. Now a case manager, which is a non-management position, signs the Notice. The case manager also has authority to sign a default order, if there is no request for a hearing before an ALJ.

* Interview with Vicki Tungate, Policy Analyst, Oregon Division of Child Support.

¹ Table 4, Statistical Program Status, OCSE FY 2006 Preliminary Data Report.

² State Box Score, OCSE FY 2006 Preliminary Data Report.

The final change has been within the administrative hearings before an ALJ. At one time, case managers appeared at every administrative hearing. However, the Administrative Procedure Act provides that the agency may designate its file as the record in its contested case notice (the Notice and Finding), and then send its entire file to the Office of Administrative Hearings with any hearing request that is received. When the agency examined its workloads, it realized that at the administrative hearing, case managers were simply reciting facts that were already in the record. As a result, the agency stopped having the case manager appear in every case; the case manager appears only upon request by the ALJ. When the case manager does participate in an administrative hearing, he or she cannot argue case law or apply Oregon law to the facts of the case. The case manager can only testify as to the agency records.

Oregon's administrative process is subject to the Oregon Administrative Procedure Act.

The statutory authority for the Oregon administrative process is found within chapter 25 (for most enforcement actions and for review and adjustment) and chapter 416 (for support, paternity and arrears establishment, and for modification) of the Oregon Revised Statutes. Detail for Oregon's administrative process is also found within Oregon Administrative Rules.

II. Due Process Summary

As noted above, the Oregon administrative process has evolved over time.

Before any administrative action is taken, the Division sends the parties a notice.

Under Oregon law, if either party objects to the administrative Notice and Finding in a paternity case, the agency certifies the matter to the court.

When a support establishment case is opened, the agency serves both parties with a Notice and Finding of Financial Responsibility. The notice informs the parties of the proposed action and of their right to contest the notice and finding, within a certain time period, by requesting an administrative hearing. In the absence of a timely response, the agency prepares a default order in accordance with the notice and finding. The order is immediately enforceable; there is no requirement that the court ratify the order. If there is a timely contest to the Notice, an administrative hearing is scheduled.

If a parent timely requests an administrative hearing, it is held before an administrative law judge (ALJ). Administrative law judges are employed by the Office of Administrative Hearings (OAH), which is a separate agency and not part of the child support program or its umbrella agency. At the administrative hearing, the parties can be represented by an attorney, but attorneys rarely participate. No one usually presents the case on behalf of the agency. As noted earlier, the case is heard on the record sent over by the division. A IV-D attorney rarely appears. Most of the hearings are conducted by telephone. The administrative hearing adheres to the Oregon Administrative Procedure

Act. Parties may present evidence. There is a record of the proceeding. The ALJ usually issues a decision within 14 days of the hearing. The decision is prepared by the ALJ using boilerplate language, submitted to OAH, and sent to both parents by regular mail within two to three days. The ALJ order is final. It is in full force and effect during any appeal, unless stayed by the court.

A party may appeal an order entered by an ALJ, or any default or consent order entered by the Division, pursuant to ORS §§ 416.400 to 416.465 by filing a petition for review within 60 days after the order has been entered. The appeal is to the circuit court and is a *de novo* review.

As noted, an administrative support order does not have to be filed with the court in order to be effective. However, when the order is filed with the clerk of circuit court, the order has the force and effect of a judgment of the circuit court. Such effect includes the creation of a judgment lien and the ability to enforce the order by contempt proceedings. The exception is an administrative order that modifies a court order. Such an order does not become effective until it is reviewed and approved by the court that issued the original order.

The Division can administratively modify an administrative support order, but cannot administratively modify a court order. If the initial support order was issued by the court, an administrative order modifying the court order is not effective until it is reviewed and approved by the court that entered the court order. The court must make a written finding on the record that the administrative order complies with the child support guidelines. If the court finds that the administrative order should not be approved, the court sets the matter for a hearing *de novo*.

There are no reported appellate decisions in which a party has challenged the constitutionality of the Oregon child support administrative procedures.

III. Establishment of Parentage

If both parents sign statements that paternity has not been legally established and that the male parent is the father of the child, the agency may enter an order establishing paternity.

If paternity is at issue, the agency may simultaneously serve a Notice and Finding of Financial Responsibility and an administrative order for parentage tests. The administrative order for parentage tests may require either party to file a denial of paternity in order to receive a parentage test, or it may allow testing prior to a party filing a responsive answer. Typically the Division requires a denial to trigger the parentage test; the exception is a multiple alleged father case where the mother is unable to name a most likely alleged father (see OAR 137-055-3060). The Notice contents in a paternity case differ from the Notice in a support case. In a paternity case, the Notice and Finding also include the following:

- The probable time during which conception took place

- A statement that if the alleged parent does not timely deny paternity and request a hearing, the agency, without further notice, may enter an order that declares and establishes the alleged parent as the child's legal parent.

In a paternity case, the parties have a longer time period in which to file a contest than in an establishment case: 30 days rather than 20 days. Another difference is the service requirement. In a support case, the agency can serve the Notice and Finding of Financial Responsibility by certified mail, return receipt requested. In a paternity case, service must be by personal service.

If the parties fail to appear for parentage testing, after proper service, or do not timely respond to the Notice and Finding and request a hearing, the agency can issue a default order in accordance with the notice, without further notice to the parent. The order can establish paternity as well as a support amount.

If either party denies paternity, establishment of a support amount is held in abeyance pending genetic test results. If the test results exclude the alleged father from parentage, the agency applies to the court for a judgment of non-paternity.

Under Oregon law, if the genetic test results show a cumulative paternity index of 99 or greater, a rebuttable presumption of paternity is created. Evidence of the test, along with the testimony of the custodial parent, is sufficient for the agency to enter an order declaring the alleged father to be the father. Prior to doing so, however, the agency gives an additional notice of intent, sent to both parents by regular mail, allowing both parties an opportunity to request a hearing on the support issue, if one has not already been submitted, or to continue to object to paternity. Both parties then have 30 days to respond to that notice. If either party objects, the agency certifies the matter to the court. Any additional response denying paternity and requesting a hearing is sent to the custodial parent (or, if the custodial parent is the one objecting, to the alleged father) by regular mail.

Where there is a presumption of paternity based on genetic test results, if a party objects and requests a court hearing, the court may nevertheless enter a temporary support order pending the determination of parentage by the court.

At the court hearing, if the court establishes paternity, it may also resolve the support issues.

IV. Support Establishment

The child support agency can administratively establish support when there is no court order for support. The case manager reviews income information available through employment records, data from the National Directory of New Hires, and information from questionnaires sent to the parties after the case is opened. If the agency has no current income information, the case manager can impute income based on minimum

wage or on the occupational rate using the party's past work history . A case manager³ prepares the Notice and Finding of Financial Responsibility. In calculating the support amount to include in the Notice, the case manager can deviate from the guideline amount, if appropriate, based on permissible deviation factors.

The agency serves the noncustodial parent with the Notice and Finding of Financial Responsibility. Service is by certified mail, return receipt requested, if paternity is not an issue. The custodial parent is served a copy by regular mail. The Notice includes the following information:

- A statement of the monthly support for which the parent will be responsible
- A statement that the parent may be required to provide health care coverage
- A statement, to the extent known, regarding whether there is any pending support action or any other support order involving the same child(ren)
- A statement that if the noncustodial parent or custodial parent desires to discuss the support amount or health care coverage, the parent may contact the agency and request a negotiation conference. If no agreement is reached, the agency may issue a new notice and finding of financial responsibility, which may be sent by regular mail
- A statement that if the noncustodial or custodial parent objects to the notice and finding, the parent has 20 days from the date of service to send the agency a written response setting forth any objections and requesting a hearing.
- A statement that if a timely response is received, the parent has a right to a hearing. If no timely response is received, the agency may enter an order in accordance with the notice and finding of financial responsibility.
- A statement that as soon as the order is entered, the noncustodial parent's property is subject to collection action.
- A statement that if the parent has any questions, the parent should contact the agency or consult an attorney.

If there is no timely response to the Notice and Finding of Financial Responsibility, an agency case manager signs a Final Order based upon the Notice and Finding. (Although these orders are sometimes called default orders, the lack of a response may simply mean that the parties agree to the finding of support in the Notice.) The order is immediately enforceable; there is no requirement that the court ratify the order. The agency sends the parents a copy of the order by regular mail.

If a parent files a response within 20 days, an administrative hearing is scheduled. The hearing is conducted pursuant to the Oregon Administrative Procedure Act. A party may appeal an order entered by an ALJ by filing a petition for review with the circuit court. The appeal is a *de novo* review.

³ Most field offices contain office specialists (who process paperwork), locators, case managers, child support specialists (who do training and/or write procedures), and management

V. Review and Adjustment/Modification

Oregon law does not provide for Cost of Living Adjustments (COLAs) in administrative support orders.

Once every two years (this will change to three years in October 2007), the agency may initiate proceedings to review and adjust an administrative support order. The agency does so by mailing the parties a notice of intent to review their support order. The notice directs the parties to submit financial information within 30 days from the date of the notice. The notice informs the parties that the agency will consider such information prior to calculating the presumed correct amount of support. The notice describes the steps that the agency will take and the process for a parent to challenge the agency determination.

Based on the information provided by the parties, as well as information from available data bases with which it has interfaces, the case manager calculates the guideline amount. The agency sends the parties a notice of the review decision – a determination that the existing support order is in substantial compliance with the support guidelines or a determination that the order should be modified. The non-requesting party must be served by certified mail, return receipt requested. The notice advises the parties that each has 30 days from the date of service of the notice to file a written object to the determination or proposed modification.

Upon receiving an objection, the agency reviews the case to determine whether the support should be recalculated and, if so, notifies the parties of the new presumed amount. Parties have a “new” 30-day period to file a written objection. If there is no hearing request within the 30 day period, the agency submits the review decision or modification of the support order to the circuit court for entry in the court register. The order is effective without court filing. However, the Division practice is to file the decision or modification with the court in order to obtain lien effect and to ensure that it supersedes the previous order.

If, in response, a party files a written request for a hearing within 30 days from the notice, a hearing on the objection is conducted by an ALJ assigned from the Office of Administrative Hearings. Any administrative hearing must adhere to the Oregon Administrative Procedure Act. An order issued by the ALJ is final and is not stayed by an appeal, unless the court stays enforcement. A party may file a petition for review by the circuit court within 60 days from entry of the ALJ order. The court hearing is *de novo*.

Either parent may initiate the modification of an administrative or judicial order based upon a substantial change of circumstances. The statute details what constitutes a substantial change in circumstances. The requesting party must provide the agency appropriate documentation showing a change of circumstances and complete a Uniform Income Statement or Uniform Support Affidavit. Upon receipt of a written request for a change of circumstances modification, the agency notifies the non-requesting party of the

request by certified mail, return receipt requested, and mails a copy of the notice to the requesting party by regular mail. The content of the notice and the process is similar to that described above when the agency initiates a review. If the request for modification is denied (e.g., the requesting party fails to provide the appropriate documentation or fails to meet the \$50/15% criteria necessary to establish a change in circumstances), the agency will notify the requesting party of the denial in writing within 30 days and inform the party of his or her right to file a motion for modification with the court. The law also provides that at no point is a party precluded from hiring a private attorney to seek modification of a support order.

If the initial support order was issued by the court, an administrative order modifying the court order is not effective until it is reviewed and approved by the court that entered the court order. The court must make a written finding on the record that the administrative order complies with the child support guidelines. If the court finds that the administrative order should not be approved, the court sets the matter for a hearing *de novo*.

VI. Enforcement

The Oregon child support agency has a full range of administrative enforcement remedies, e.g., income withholding, license suspension, order to withhold and deliver, administrative seizure, credit bureau reporting. With the exception of contempt, which requires a court hearing, the agency uses the administrative process for enforcement actions.

The agency may establish arrears through a Notice of Intent to Establish and Enforce Arrears. The Notice is served on the noncustodial parent by certified mail, return receipt requested. A copy is sent to the custodial parent by regular mail. The Notice includes the following statements:

- A statement of the arrearage amount
- A demand that the obligor make full payment within 14 days of service of the notice;
- A statement that if full payment or an objection is not received within 14 days, the agency will enter an order establishing the arrearages as stated in the notice.
- A statement that a party may object by sending a written response setting forth any objections and requesting a hearing. The response must be sent within 14 days. The only valid objection is that the amount of arrearage is incorrect.

If a party objects to enforcement on the basis that the amount of the arrears is incorrect, an ALJ may determine the correct amount of the arrears. The amount of arrears as stated in the Notice is presumed to be accurate. A party may rebut the presumption by presenting evidence of errors in calculation, showing that payments were made for which credits were not appropriately recorded, or other evidence. The ALJ may enter an order providing for enforcement of current support pending determination of the arrearage.

If there is no timely written response and request for hearing, the agency enters an order directing that the amount of the arrearages stated in the notice be entered in the child support accounting record maintained by the Department of Justice.

An example of administrative enforcement is license suspension. According to Oregon law, upon identification of a case that meets the triggering threshold for license suspension, the agency may issue a notice to the noncustodial parent by regular, first class mail. The notice includes the following information:

- That certain licenses, specified in the notice, are subject to suspension
- The amount of arrears
- The procedures available for contesting the suspension
- The available defenses, i.e., the arrears are not greater than three months of support or \$2500; there is a mistaken identity; the person subject to the suspension has complied with other procedural orders; the person subject to the suspension is in compliance with a previous agreement.
- The noncustodial parent may enter into an agreement with the agency, and so long as the parent complies with the agreement, suspension is precluded
- The noncustodial parent has 30 days from the date of the notice to contact the agency to contest the action in writing; comply with a procedural order; or enter into a written agreement with the agency
- Failure to contact with agency within 30 days will result in notification to the issuing agency to suspend the license.

If the noncustodial parent contacts the agency within 30 days from the date of the notice, the parent and agency may enter into an agreed payment plan. If the parent objects to the suspension, the agency provides the parent an opportunity to present his or her defense. Based on the information presented, the case manager determines whether suspension should occur. The agency mails a copy of its determination to the noncustodial parent. The parent may object to the determination within 30 days from the date of the determination. Any hearing on the objection is before an ALJ assigned from the Office of Administrative Hearings. The suspension is stayed pending the ALJ decision. If the ALJ decision supports suspension, the agency will notify the issuing entity to suspend the license. The ALJ order is subject to judicial review. However, any suspension is not stayed pending judicial review.

If the noncustodial parent does not timely file a contest, timely enter into a payment agreement, or comply with an agreement previously entered into, the agency will advise the issuing entity to suspend the parent's license.

VII. Statistics

Timeframes

According to the Division's 2006 self-assessment report, in a case population size of 14,227, the agency sampled 376 cases and reviewed 313 cases. It found that in 290 cases, or 92.65% of the sampled cases, a support order was established within six months

of successful service of process. This exceeds the federal benchmark that 75% of orders must be established within six months. According to the self assessment, 99.36% of the sampled cases had support orders established within one year; this exceeds the federal benchmark of 90%.

Contests to Administrative Notice

The agency does not track the number of support cases in which a parent requests an administrative hearing. The agency receives hearing requests on issues other than order establishment, e.g., arrears establishment, credit for physical custody, suspension of support. An agency representative estimates that there are hearing requests in no more than 20% of support establishment cases.

Number of Administrative Law Judges

There are currently between seven and eight administrative law judges who conduct administrative child support hearings. That number fluctuates as a need arises.

VIII. Strengths/Limitations

The agency representative noted the following strengths of the Oregon administrative process:

- It provides parents with due process protections.
- It ensures the parties have access to the courts.
- It reduces the pressure on court dockets.

The agency representative noted the following limitations of the Oregon administrative process

- Because the administrative process is designed to process cases fairly, but expeditiously, the ALJ does not have equity powers.
- Because there are so many administrative notices and so many words on an Oregon administrative form, it is difficult for the agency to develop content that is at the appropriate educational level for parents to easily understand them.

IX. Recommendations/Best Practices

Having the administrative law judges located in an independent agency helps the public perception of fairness.

Ensure that parents know they always have the right to judicial review. Oregon decided to have its circuit court review be *de novo*, rather than on the record, in order to provide parents the opportunity to present their facts to a judge.

Make sure agency caseworkers are well trained. It is important for the workers who are involved with the administrative process to know the underpinnings of legal due process.

Ensure that the agency adheres to due process protections. Do not abuse administrative authority.

Develop standard forms and procedures. The Oregon child support agency has a formal process for implementing forms and procedures that are approved by the agency general counsel for use by all program participants. Such a process ensures that all customers receive equal treatment. Deviation from the standard forms/procedures is generally not allowed, recognizing that exceptions must be made on a case-by-case basis.

Selected Oregon Statutes Oregon Revised Statutes

109.070. (1) The paternity of a person may be established as follows:

(a) The child of a wife cohabiting with her husband who was not impotent or sterile at the time of the conception of the child is conclusively presumed to be the child of her husband, whether or not the marriage of the husband and wife may be void.

(b) A child born in wedlock, there being no judgment of separation from bed or board, is presumed to be the child of the mother's husband, whether or not the marriage of the husband and wife may be void. This is a disputable presumption.

(c) By the marriage of the parents of a child after birth of the child.

(d) By filiation proceedings.

(e) By filing with the State Registrar of the Center for Health Statistics the voluntary acknowledgment of paternity form as provided for by ORS 432.287. Except as otherwise provided in subsections (2) to (4) of this section, this filing establishes paternity for all purposes.

(f) By having established paternity through a voluntary acknowledgment of paternity process in another state.

(g) By paternity being established or declared by other provision of law.

(2) A party to a voluntary acknowledgment of paternity may rescind the acknowledgment within the earlier of:

(a) Sixty days after filing the acknowledgment; or

(b) The date of a proceeding relating to the child, including a proceeding to establish a support order, in which the party wishing to rescind the acknowledgment is also a party. For the purposes of this paragraph, the date of a proceeding is the date on which an order is entered in the proceeding.

(3)(a) A signed voluntary acknowledgment of paternity filed in this state may be challenged in circuit court:

(A) At any time after the 60-day period on the basis of fraud, duress or a material mistake of fact. The party bringing the challenge has the burden of proof.

(B) Within one year after the acknowledgment has been filed, unless the provisions of subsection (4)(a) of this section apply. A challenge to the acknowledgment is not allowed more than one year after the acknowledgment has been filed, unless the provisions of subparagraph (A) of this paragraph apply.

(b) Legal responsibilities arising from the acknowledgment, including child support obligations, may not be suspended during the challenge, except for good cause.

(4)(a) Within one year after a voluntary acknowledgment of paternity form is filed in this state and if blood tests, as defined in ORS 109.251, have not been previously completed, a party to the acknowledgment or the state, if child support enforcement services are being provided under ORS 25.080, may apply to the court or to the administrator, as defined in ORS 25.010, for an order requiring that the mother, the child and the male party submit to blood tests as provided in ORS 109.250 to 109.262.

(b) If the results of the tests performed under paragraph (a) of this subsection exclude the male party as a possible father of the child, a party or the state, if child support enforcement services are being provided under ORS 25.080, may apply to the court for a judgment of nonpaternity. The party that applied for the judgment shall send a certified

true copy of the judgment to the State Registrar of the Center for Health Statistics and to the Department of Justice as the state disbursement unit. Upon receipt of a judgment of nonpaternity, the state registrar shall correct any records maintained by the state registrar that indicate that the male party is the parent of the child.

(c) The state Child Support Program shall pay any costs for blood tests subject to recovery from the party who requested the tests.

Note: Sections 9 and 10, chapter 160, Oregon Laws 2005, provide:

Sec. 9. (1) As used in this section, “legal father” includes a man whose paternity has been established under ORS 109.070 (1) and a man who has been ordered to pay child support.

(2) After paternity has been established under ORS 109.070 (1), if no blood tests, as defined in ORS 109.251, were performed to establish paternity, the mother or the legal father may petition the court to reopen the issue of paternity. The petitioner:

(a) Must file the petition within two years after a voluntary acknowledgment of paternity is filed with the State Registrar of the Center for Health Statistics;

(b) Must file the petition within two years after paternity is established as a result of a default order or a default judgment that is no longer subject to appeal; or

(c) May file the petition at any time if the legal father is the presumed father under ORS 109.070.

(3) The petition must contain:

(a) An affidavit executed by the petitioner stating that the petitioner has discovered new evidence since paternity was established or that the legal father is the presumed father and the petitioner has not had an opportunity previously to challenge the paternity; and

(b) The results of blood tests, administered within 90 days before the petition is filed, that show a zero percent probability that the legal father is the biological father of the child.

(4) Upon receipt of a petition, the court:

(a) May order the mother, child and legal father to submit to blood tests as provided in ORS 109.250 to 109.262 if the blood test results submitted with the petition were not properly conducted or documented; or

(b) Shall order the mother, child and legal father to submit to blood tests as provided in ORS 109.250 to 109.262 upon the motion of a party.

(5) Notwithstanding ORS 109.252, the petitioner shall pay any costs for blood tests ordered under subsection (4) of this section.

(6) The provisions of ORS 109.155 apply to a proceeding under this section.

(7) The court shall make a determination of nonpaternity if the court finds, based on all the evidence as provided in ORS 109.258, that:

(a) The blood tests were properly conducted and documented;

(b) The legal father is not the biological father of the child;

(c) The legal father has not adopted the child;

(d) The child was not conceived by artificial insemination while the legal father and the mother were married;

(e) The petitioner has not acted to prevent the biological father from asserting his parental rights;

(f) The petitioner, with knowledge that the legal father is not the biological father, has not:

(A) Taken any action to affirm the legal father's parentage of the child; and

(B) Failed to respond to a judicial or administrative proceeding to establish paternity after receipt of proper notice and an opportunity to be heard; and

(g) In the absence of fraud, granting the petition would not cause undue harm to the child.

(8) The petitioner has the burden of proving subsection (7)(a) to (f) of this section. However:

(a) Except as provided in paragraph (b) of this subsection, when a petitioner fails to prove subsection (7)(f) of this section, the court may nevertheless grant the petition and enter a judgment of nonpaternity if the court finds that the judgment would not cause undue harm to the child.

(b) When a petitioner has signed a voluntary acknowledgment of paternity and fails to prove subsection (7)(f) of this section, the court may nevertheless grant the petition and enter a judgment of nonpaternity if the court finds that:

(A) The petitioner signed the acknowledgment without knowledge that the legal father was not the biological father of the child; and

(B) The judgment would not cause undue harm to the child.

(9)(a) A child support obligation ordered before a petition is filed under this section continues until a judgment of nonpaternity is entered. However, upon a showing of good cause, the court may suspend the obligation if:

(A) To do so would not cause undue harm to the child; and

(B) The petitioner has not signed a voluntary acknowledgment of paternity.

(b) In a judgment of nonpaternity, the court shall vacate any ongoing child support obligation of the legal father and may vacate any past due support. Child support payments made before entry of a judgment of nonpaternity may not be returned to the payer.

(c) This section does not give a legal father a cause of action against the mother or biological father for reimbursement of child support paid or accrued before the entry of the judgment of nonpaternity.

(10) If the court denies the petition, the court shall award reasonable attorney fees to the nonpetitioning parties.

(11) The authority to petition the court under this section expires on the death of the legal father of a child. The personal representative of the legal father's estate may not file a petition under this section. [2005 c.160 §9]

Sec. 10. Section 9 of this 2005 Act is repealed on January 2, 2008. [2005 c.160 §10]

25.085 Service on obligee; methods. (1) In any proceeding under ORS 25.080, service of legal documents upon an obligee may be by regular mail to the address at which the obligee receives public assistance, to an address provided by the obligee on the obligee's application for child support enforcement services or to any other address given by the obligee. When service is authorized by regular mail under this section, proof of service may be by notation upon the computerized case record made by the person making the mailing. The notation shall set forth the address to which the documents were mailed, the

date they were mailed, the description of the documents mailed and the name of the person making the notation. If the documents are returned by the postal service as undeliverable as addressed, that fact shall be noted on the computerized case record. If no new address for service by regular mail can be obtained, service shall be by certified mail, return receipt requested or by personal service upon the obligee.

(2) Notwithstanding any other provision of this chapter or ORS chapter 110 or 416, when a case is referred to this state by a public child support agency of another state for action in this state, there is no requirement that an obligee, present in the initiating state and receiving child support enforcement services from that state, be served in any action taken in this state as a consequence of the interstate referral. In such cases the requirement to serve the obligee that would otherwise apply is satisfied by sending to the initiating agency in the other state, by regular mail, any documents that would otherwise be served upon the obligee.

(3) The appropriate child support agency of the state shall make any mailings to or service upon the obligee that is required by this section. [1993 c.596 §17; 1995 c.608 §26; 1997 c.249 §16; 1999 c.87 §1; 2003 c.572 §4]

25.287 Proceedings to modify orders to comply with formula; when proceeding may be initiated; issues considered. (1)(a) The entity providing support enforcement services under ORS 25.080 may initiate proceedings to modify a support obligation to ensure that the support obligation is in accordance with the formula established under ORS 25.270 to 25.287.

(b) Proceedings under this subsection may occur only after two years have elapsed from the later of the following:

(A) The date the original support obligation took effect;

(B) The date any previous modification of the support obligation took effect; or

(C) The date of any previous review and determination under this subsection that resulted in no modification of the support obligation.

(c) For purposes of paragraph (b) of this subsection, a support obligation or modification takes effect on the first date on which the obligor is to pay the established or modified support amount.

(d) The only issues at proceedings under this subsection are whether two years have elapsed, as described in paragraph (b) of this subsection, and whether the support obligation is in substantial compliance with the formula established under ORS 25.270 to 25.287.

(e) Upon review, if the administrator determines that a support obligation does not qualify for modification under this section, a party may object to the determination within 30 days after the date of the determination. A hearing on the objection shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings. Appeal of the order of the administrative law judge may be taken to the circuit court of the county in which the support obligation has been entered or registered for a hearing de novo. The appeal to the court shall be by petition for review filed within 60 days after entry of the order of the administrative law judge.

(f) If the court, the administrator or the administrative law judge finds that more than two years have elapsed, as described in paragraph (b) of this subsection, the court, the administrator or the administrative law judge shall modify the support order to bring the

support obligation into substantial compliance with the formula established under ORS 25.270 to 25.287, regardless of whether there has been a substantial change in circumstances since the support obligation was last established, modified or reviewed. Proceedings by the administrator or administrative law judge under this subsection shall be conducted according to the provisions of ORS 416.425 and 416.427.

(g) The provisions of this subsection apply to any support obligation established by a support order under ORS chapter 24, 107, 108, 109, 110 or 416 or ORS 419B.400 or 419C.590.

(2) The entity providing support enforcement services shall state in the document initiating the proceeding, to the extent known:

(a) Whether there is pending in this state or any other jurisdiction any type of support proceeding involving the child, including a proceeding brought under ORS 107.085, 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 125.025, 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter 110; and

(b) Whether there exists in this state or any other jurisdiction a support order, as defined in ORS 110.303, involving the child, other than the support obligation the entity seeks to modify.

(3) The entity providing support enforcement services shall include with the document initiating the proceeding a certificate regarding any pending support proceeding and any existing support order other than the support obligation the entity seeks to modify. The entity providing support enforcement services shall use a certificate that is in a form prescribed by the administrator and shall include information required by the administrator and subsection (2) of this section.

(4) The administrator, court or administrative law judge may use the provisions of subsection (1) of this section when a support order was entered in another state and registered in Oregon, the provisions of ORS chapter 110 apply and more than two years have elapsed as provided in subsection (1)(b) of this section.

(5) Notwithstanding the provisions of this section, proceedings may be initiated at any time to modify a support obligation based upon a substantial change of circumstances under any other provision of law.

(6) The obligee is a party to any action to modify a support obligation under this section. [1991 c.519 §3; 1993 c.33 §369; 1993 c.596 §7 (enacted in lieu of 25.285 in 1993); 1995 c.608 §31; 1999 c.80 §64; 1999 c.735 §1; 2001 c.455 §§7,8; 2003 c.75 §24; 2003 c.116 §§1,2; 2003 c.576 §§183,184; 2005 c.560 §4]

25.750 Suspension of licenses, certificates, permits and registrations; when

authorized; rules. (1) All licenses, certificates, permits or registrations that a person is required by state law to possess in order to engage in an occupation or profession or to use a particular occupational or professional title, all annual licenses issued to individuals by the Oregon Liquor Control Commission, all driver licenses or permits issued by the Department of Transportation and recreational hunting and fishing licenses, as defined by rule of the Department of Justice, are subject to suspension by the respective issuing entities upon certification to the issuing entity by the administrator that a child support case record is being maintained by the Department of Justice, that the case is being enforced by the administrator under the provisions of ORS 25.080 and that one or both of the following conditions apply:

(a) That the party holding the license, certificate, permit or registration is under order or judgment to pay monthly child support and is in arrears, with respect to any such judgment or order requiring the payment of child support, in an amount equal to three months of support or \$2,500, whichever occurs later, and:

(A) Has not entered into an agreement with the administrator with respect to the child support obligation; or

(B) Is not in compliance with an agreement entered into with the administrator; or

(b) That the party holding the license, certificate, permit or registration has failed, after receiving appropriate notice, to comply with a subpoena or other procedural order relating to a paternity or child support proceeding and:

(A) Has not entered into an agreement with the administrator with respect to compliance; or

(B) Is not in compliance with such an agreement.

(2) The Department of Justice by rule shall specify the conditions and terms of agreements, compliance with which precludes the suspension of the license, certificate, permit or registration. [1993 c.365 §2; 1995 c.620 §1; 1995 c.750 §7; 1997 c.704 §37; 1999 c.80 §11; 2001 c.323 §1; 2001 c.455 §14; 2003 c.73 §43]

25.759 Notice to persons subject to suspension; contents. Upon identification of a person subject to suspension under ORS 25.750 to 25.783, the administrator may issue a notice, sent by regular mail to both the address of record as shown in the records of the issuing entity and the address of record as shown on the administrator's child support file. Such notice shall contain the following information:

(1) That certain licenses, certificates, permits and registrations, which shall be specified in the notice, are subject to suspension as provided for by ORS 25.750 to 25.783.

(2) The name, Social Security number, if available, date of birth, if known, and child support case number or numbers of the person subject to the action.

(3) The amount of arrears and the amount of the monthly child support obligation, if any, or, if suspension is based on ORS 25.750 (1)(b), a description of the subpoena or other procedural order with which the person subject to the action has failed to comply.

(4) The procedures available for contesting the suspension of a license, certificate, permit or registration.

(5) That the only bases for contesting the suspension are:

(a) That the arrears are not greater than three months of support or \$2,500;

(b) That there is a mistake in the identity of the obligor;

(c) That the person subject to the suspension has complied with the subpoena or other procedural order identified in subsection (3) of this section; or

(d) That the person subject to the suspension is in compliance with a previous agreement as provided for by ORS 25.750 to 25.783.

(6) That the obligor may enter into an agreement, prescribed by rule by the Department of Justice, compliance with which shall preclude the suspension under ORS 25.750 to 25.783.

(7) That the obligor has 30 days from the date of the notice to contact the administrator in order to:

(a) Contest the action in writing on a form prescribed by the administrator;

(b) Comply with the subpoena or procedural order identified in subsection (3) of this section; or

(c) Enter into an agreement authorized by ORS 25.750 and 25.762. The notice shall state that any agreement must be in writing and must be entered into within 30 days of making contact with the administrator.

(8) That failure to contact the administrator within 30 days of the date of the notice shall result in notification to the issuing entity to suspend the license, certificate, permit or registration. [1993 c.365 §5; 1995 c.620 §3; 1997 c.704 §39; 1999 c.80 §13; 2001 c.323 §2; 2001 c.455 §15; 2003 c.73 §44]

25.762 Agreement between obligor and administrator; effect of failure to contest suspension or to enter into agreement. (1) If the administrator is contacted within 30 days of the date of the notice specified in ORS 25.759, the administrator and the obligor may enter into an agreement as provided for by rule of the Department of Justice. If no contest is filed or if no agreement is entered into within the time prescribed by ORS 25.750 to 25.783, or if the obligor fails to comply with the terms of an agreement previously entered into, the administrator shall advise the issuing entity to suspend the license, certificate, permit or registration forthwith.

(2) After receipt of notice to suspend from the administrator, no further administrative review or contested case proceeding within or by the issuing entity is required. [1993 c.365 §6; 1995 c.620 §4; 1999 c.80 §14; 2001 c.323 §3; 2003 c.73 §45]

25.765 Procedure if obligor contacts administrator within time limits; hearing. (1) If the obligor makes the contact within 30 days of the date of the notice as provided for in ORS 25.759, the administrator shall provide the obligor with the opportunity to contest the suspension on the bases set forth in ORS 25.759 (5). The administrator shall determine whether suspension should occur. If the administrator determines that suspension should occur, the administrator shall make a written determination of such finding.

(2) The obligor may object to the determination described in subsection (1) of this section within 30 days after the date of the determination. Any hearing on the objection shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings. Any suspension is stayed pending the decision of the administrative law judge. Any order of the administrative law judge that supports a suspension shall result in the notification to the issuing entity by the administrator to suspend the license, certificate, permit or registration forthwith.

(3) After receipt of notice to suspend from the administrator, no further administrative review or contested case proceeding within or by the issuing entity is required. [1993 c.365 §7; 1995 c.620 §5; 1999 c.80 §15; 1999 c.849 §§43,44; 2001 c.323 §§4,5; 2003 c.75 §26; 2005 c.560 §7]

25.768 Judicial review of order. The order of the administrative law judge is final and is subject to judicial review as provided in ORS 183.482. Any suspension under ORS 25.750 to 25.783 is not stayed pending judicial review. [1993 c.365 §8; 2003 c.75 §76]

416.415 Notice and finding of financial responsibility; request for hearing; order.

(1)(a) At any time after the state is assigned support rights, a public assistance payment is made, an application for enforcement services under ORS 25.080 is made by an individual who is not a recipient of public assistance or a written request for enforcement of a support obligation is received from the state agency of another state responsible for administering the federal child support enforcement program, the administrator may, if there is no court order, issue a notice and finding of financial responsibility. The notice shall be served upon the parent in the manner prescribed for service of summons in a civil action, or by certified mail, return receipt requested. Notices that involve the establishment of paternity must be served by personal service. All notices may be personally served by the administrator on the premises of the offices of the administrator.

(b) The administrator shall serve the notice and finding issued under this section upon the obligee. Service shall be by regular mail.

(2) The administrator shall include in the notice:

(a) A statement of the name of the caretaker relative or agency and the name of the dependent child for whom support is to be paid;

(b) A statement of the monthly support for which the parent shall be responsible;

(c) A statement of the past support for which the parent shall be responsible;

(d) A statement that the parent may be required to provide health care coverage for the dependent child whenever the coverage is available to the parent at a reasonable cost;

(e) To the extent known, a statement of:

(A) Whether there is pending in this state or any other jurisdiction any type of support proceeding involving the dependent child, including a proceeding brought under ORS 25.287, 107.085, 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 125.025, 416.425, 419B.400 or 419C.590 or ORS chapter 110; and

(B) Whether there exists in this state or any other jurisdiction a support order, as defined in ORS 110.303, involving the dependent child;

(f) A statement that if the parent or the obligee desires to discuss the amount of support or health care coverage that the parent is required to pay or provide, the parent or the obligee may contact the office that sent the notice and request a negotiation conference. If no agreement is reached on the monthly support to be paid, the administrator may issue a new notice and finding of financial responsibility, which may be sent to the parent and to the obligee by regular mail addressed to the parent's and to the obligee's last-known address, or if applicable, the parent's or the obligee's attorney's last-known address;

(g) A statement that if the parent or the obligee objects to all or any part of the notice and finding of financial responsibility, then the parent or the obligee must send to the office issuing the notice, within 20 days of the date of service, a written response that sets forth any objections and requests a hearing. In those cases where the administrator is seeking to establish paternity, then the alleged parent and the obligee will have 30 days to respond instead of 20 days;

(h) A statement that if such a timely response is received by the appropriate office, either the parent or the obligee or both shall have the right to a hearing; and that if no timely written response is received, the administrator may enter an order in accordance with the notice and finding of financial responsibility;

(i) A statement that as soon as the order is entered, the property of the parent is subject to collection action, including but not limited to wage withholding, garnishment and liens and execution thereon;

(j) A reference to ORS 416.400 to 416.465;

(k) A statement that both the parent and the obligee are responsible for notifying the office of any change of address or employment;

(L) A statement that if the parent has any questions, the parent should telephone or visit the appropriate office or consult an attorney; and

(m) Such other information as the administrator finds appropriate.

(3) If the paternity of the dependent child has not been legally established, the notice and finding of financial responsibility shall also include:

(a) An allegation that the person is the parent of the dependent child;

(b) The name of the child's other parent;

(c) The child's date of birth;

(d) The probable time or period of time during which conception took place; and

(e) A statement that if the alleged parent or the obligee does not timely send to the office issuing the notice a written response that denies paternity and requests a hearing, then the administrator, without further notice to the alleged parent, or to the obligee, may enter an order that declares and establishes the alleged parent as the legal parent of the child.

(4) The statement of monthly future support required under subsection (2)(b) and the statement of past support required under subsection (2)(c) of this section are to be computed as follows:

(a) If there is sufficient information available concerning the parent's financial and living situation, the formula provided for in ORS 25.275 and 25.280 shall be used; or

(b) If there is insufficient information available to use the formula, an allegation of ability to pay shall be the basis of the statement.

(5) The parent or alleged parent and the obligee shall have time to request a hearing as outlined in subsection (2)(g) of this section. The time limits may be extended by the administrator and are nonjurisdictional.

(6) If a timely written response setting forth objections and requesting a hearing is received by the appropriate office, a hearing shall be held under ORS 416.427.

(7) If no timely written response and request for hearing is received by the appropriate office, the administrator may enter an order in accordance with the notice, and shall include in that order:

(a) If the paternity of the dependent child is established by the order, a declaration of that fact;

(b) The amount of monthly support to be paid, with directions on the manner of payment;

(c) The amount of past support to be ordered against the parent;

(d) Whether health care coverage is to be provided for the dependent child;

(e) The name of the caretaker relative or agency and the name and birthdate of the dependent child for whom support is to be paid; and

(f) A statement that the property of the parent is subject to collection action, including but not limited to wage withholding, garnishment and liens and execution thereon.

(8) The parent and the obligee shall be sent a copy of the order by regular mail

addressed to the last-known address of each of the parties or if applicable, to the last-known address of an attorney of record for a party. The order is final, and action by the administrator to enforce and collect upon the order, including arrearages, may be taken from the date of issuance of the order.

(9) The provisions of ORS 107.108 apply to an order entered under this section for the support of a child attending school. [1979 c.421 §4; 1985 c.671 §33; 1989 c.566 §1; 1989 c.811 §7; 1993 c.596 §32; 1995 c.514 §9; 1997 c.704 §62; 2003 c.73 §62; 2003 c.116 §12; 2005 c.560 §10]

416.419 Tribunals for establishment of paternity or for child support order. (1)

Except as otherwise provided in subsection (2) of this section, the administrator may act as the tribunal described in ORS 110.304 in the establishment of paternity or of a child support order, or in the modification or enforcement of a child support order.

(2)(a) When a hearing is requested pursuant to ORS 416.427, the tribunal is the Office of Administrative Hearings, except as provided in ORS 416.430.

(b) When an order is appealed pursuant to ORS 416.427 (6), the tribunal is a circuit court. [1995 c.608 §15; 1997 c.704 §45; 1999 c.680 §4; 2005 c.560 §12]

416.425 Motions to modify financial responsibility orders; service. (1) Any time support enforcement services are being provided under ORS 25.080, the obligor, the obligee, the party holding the support rights or the administrator may move for the existing order to be modified under this section. The motion shall be in writing in a form prescribed by the administrator, shall set out the reasons for modification and shall state the telephone number and address of the party requesting modification.

(2) The moving party shall state in the motion, to the extent known:

(a) Whether there is pending in this state or any other jurisdiction any type of support proceeding involving the dependent child, including a proceeding brought under ORS 25.287, 107.085, 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 125.025, 416.415, 419B.400 or 419C.590 or ORS chapter 110; and

(b) Whether there exists in this state or any other jurisdiction a support order, as defined in ORS 110.303, involving the dependent child, other than the order the party is moving to modify.

(3) The moving party shall include with the motion a certificate regarding any pending support proceeding and any existing support order other than the order the party is moving to modify. The party shall use a certificate that is in a form prescribed by the administrator and include information required by the administrator and subsection (2) of this section.

(4) The moving party shall serve the motion upon the obligor, the obligee, the party holding the support rights and the administrator, as appropriate. The nonrequesting parties must be served in the same manner as provided for service of the notice and finding of financial responsibility under ORS 416.415 (1)(a). Notwithstanding ORS 25.085, the requesting party must be served by first class mail to the requesting party's last known address. The nonrequesting parties have 30 days to resolve the matter by stipulated agreement or to serve the moving party by regular mail with a written response setting forth any objections to the motion and a request for hearing. The hearing shall be conducted under ORS 416.427.

(5) When the moving party is other than the administrator and no objections and request for hearing have been served within 30 days, the moving party may submit a true copy of the motion to the administrative law judge as provided in ORS 416.427, except the default may not be construed to be a contested case as defined in ORS chapter 183. Upon proof of service, the administrative law judge shall issue an order granting the relief sought.

(6) When the moving party is the administrator and no objections and request for hearing have been served within 30 days, the administrator may enter an order granting the relief sought.

(7) A motion for modification made under this section does not stay the administrator from enforcing and collecting upon the existing order unless so ordered by the court in which the order is entered.

(8) An administrative order filed in accordance with ORS 416.440 is a final judgment as to any installment or payment of money that has accrued up to the time the nonrequesting party is served with a motion to set aside, alter or modify the judgment. The administrator may not set aside, alter or modify any portion of the judgment that provides for any payment of money for minor children that has accrued before the motion is served. However:

(a) The administrator may allow a credit against child support arrearages for periods of time, excluding reasonable parenting time unless otherwise provided by order or judgment, during which the obligor, with the knowledge and consent of the obligee or pursuant to court order, has physical custody of the child; and

(b) The administrator may allow a credit against child support arrearages for any Social Security or veterans' benefits paid retroactively to the child, or to a representative payee administering the funds for the child's use and benefit, as a result of a parent's disability or retirement.

(9) The party requesting modification has the burden of showing a substantial change of circumstances or that a modification is appropriate under the provisions of ORS 25.287.

(10) An administrative order modifying a court order is not effective until the administrative order is reviewed and approved by the court that entered the court order. The court shall make a written finding on the record that the administrative order complies with the formula established by ORS chapter 25. The court may approve the administrative order at any time after the order is issued. If upon review the court finds that the administrative order should not be approved, the court shall set the matter for hearing de novo.

(11) The obligee is a party to all proceedings under this section.

(12) An order entered under this section that modifies a support order because of the incarceration of the obligor is effective only during the period of the obligor's incarceration and for 60 days after the obligor's release from incarceration. The previous support order is reinstated by operation of law on the 61st day after the obligor's release from incarceration. An order that modifies a support order because of the obligor's incarceration must contain a notice that the previous order will be reinstated on the 61st day after the obligor's release from incarceration. [1979 c.421 §5; 1985 c.671 §37; 1989 c.566 §2; 1991 c.519 §4; 1993 c.596 §33; 1995 c.609 §1; 1999 c.127 §1; 1999 c.836 §1; 2003 c.75 §88; 2003 c.116 §13; 2003 c.419 §4; 2003 c.572 §16b; 2003 c.576 §208a;

416.427 Hearings procedure; parties; enforcement of order; appeal of order. (1)

When a party requests a hearing pursuant to ORS 416.415, 416.417, 416.425 (1) or 416.429, the contested case provisions of ORS chapter 183 apply except as provided in subsection (6) of this section.

(2) Except as provided in ORS 416.430, hearings shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings.

(3) The administrative law judge may issue subpoenas for witnesses necessary to develop a full record. The attorney of record for the office of the Division of Child Support or the office of the district attorney may issue subpoenas. Witnesses appearing pursuant to subpoena, other than parties or officers or employees of the administrator, shall receive fees and mileage as prescribed by law for witnesses in ORS 44.415 (2). Obedience to the subpoena may be compelled in the same manner as set out in ORS 183.440 (2).

(4) Upon issuance of an order, action by the administrator to enforce and collect upon the order, including arrearages, may be taken. Action by the administrator may not be stayed or partially stayed pending appeal or by any court unless there is substantial evidence showing that the obligor would be irreparably harmed and that the obligee would not be irreparably harmed.

(5) An order issued by the administrative law judge or the administrator is final. The order shall be in full force and effect while any appeal is pending unless the order is stayed by a court. A court may not grant a stay unless there is substantial evidence showing the obligor would be irreparably harmed and that the obligee would not be irreparably harmed.

(6) Appeal of the order of the administrative law judge or any default or consent order entered by the administrator pursuant to ORS 416.400 to 416.465 may be taken to the circuit court of the county in which the order has been entered pursuant to ORS 416.440 for a hearing de novo. The appeal shall be by petition for review filed within 60 days after the order has been entered pursuant to ORS 416.440. Unless otherwise specifically provided by law, the appeal shall be conducted pursuant to the Oregon Rules of Civil Procedure.

(7) The obligor, the obligee and the state are parties to any proceedings, including appeals, under this section. [1985 c.671 §35; 1989 c.566 §3; 1989 c.980 §13a; 1993 c.596 §34; 1995 c.608 §6; 1999 c.849 §§78,79; 2003 c.75 §34; 2003 c.576 §§209,210; 2005 c.560 §14]

416.429 Notice of intent to establish and enforce arrearages; request for hearing; order. (1) The administrator may issue a notice of intent to establish and enforce arrearages for any support order that is registered, filed or entered in this state. The notice must be served upon the obligor in the manner prescribed for service of summons in a civil action or mailed to the obligor at the obligor's last-known address by certified mail, return receipt requested. The administrator shall mail the notice to the obligee by regular mail.

(2) The notice shall include:

(a) A statement of the name of the caretaker relative or agency and the name of the

dependent child for whom support is to be paid;

(b) A statement of the monthly support the obligor is required to pay under the support order;

(c) A statement of the arrearages claimed to be owed under the support order;

(d) A demand that the obligor make full payment to the Department of Justice or the clerk of the court, whichever is appropriate, within 14 days of the receipt or service of the notice;

(e) A statement that if full payment or an objection is not received within 14 days, the administrator will enter an order directing that the amount of the arrearages stated in the notice be entered in the child support accounting record maintained by the Department of Justice;

(f) A statement that if the obligor or the obligee objects to the enforcement of the arrearages, then the objecting party must send to the office issuing the notice, within 14 days of the date of service, a written response that sets forth any objections and requests a hearing;

(g) A statement that the only basis upon which an obligor or an obligee may object to the enforcement of the arrearages is that the amount of the arrearages specified in the notice is incorrect;

(h) A reference to ORS 416.400 to 416.465;

(i) A statement that the obligor and the obligee are responsible for notifying the office of any change of address or employment;

(j) A statement that if the obligor or the obligee has any questions, the obligor or obligee should telephone or visit the appropriate office or consult an attorney; and

(k) Such other information as the administrator finds appropriate.

(3) If a timely written response setting forth objections and requesting a hearing is received by the appropriate office, a hearing shall be held under ORS 416.427.

(4) If no timely written response and request for hearing is received by the appropriate office, the administrator shall enter an order directing that the amount of the arrearages stated in the notice be entered in the child support accounting record maintained by the Department of Justice.

(5) Action to administratively enforce and collect upon the arrearages established under this section may be taken 14 days after service of or receipt or refusal of the notice by the obligor or obligee.

(6) Nothing in this section shall prevent the administrator from using other available enforcement remedies at any time. [1985 c.671 §36; 1991 c.520 §1; 1993 c.596 §35; 1995 c.608 §18; 1999 c.93 §1; 1999 c.735 §21; 2003 c.576 §211]

416.430 Establishing paternity of child; certification of paternity issue to circuit court. (1) The administrator may establish paternity of a child in the course of a support proceeding under ORS 416.400 to 416.465 when both parents sign statements that paternity has not been legally established and that the male parent is the father of the child. The administrator may enter an order which establishes paternity.

(2) If the parent fails to file a response denying paternity and requesting a hearing within the time period allowed in ORS 416.415 (2), then the administrator, without further notice to the parent, may enter an order, in accordance with ORS 416.415 (7), which declares and establishes the parent as the legal father of the child.

(3) Any order entered pursuant to subsection (1) or (2) of this section establishes legal paternity for all purposes. The Center for Health Statistics of the Department of Human Services shall prepare a new birth certificate in the new name, if any, of the child. The original birth certificate shall be sealed and filed and may be opened only upon order of a court of competent jurisdiction.

(4)(a) If paternity is alleged under ORS 416.415 (3) and a written response denying paternity and requesting a hearing is received within the time period allowed in ORS 416.415 (2), or if the administrator determines that there is a valid issue with respect to paternity of the child, the administrator, subject to the provisions of subsections (5) and (6) of this section, shall certify the matter to the circuit court for a determination based upon the contents of the file and any evidence which may be produced at trial. The proceedings in court shall for all purposes be deemed suits in equity. The provisions of ORS 109.145 to 109.230 apply to proceedings certified to court by the administrator pursuant to this section.

(b) Any response denying paternity and requesting a hearing shall be sent by the enforcement office to the obligee by regular mail.

(5) An action to establish paternity initiated under ORS 416.400 to 416.465 shall not be certified to court for trial unless all of the following have occurred:

(a) Blood tests have been conducted;

(b) The results of the blood tests have been served upon the parties and notice has been given that an order establishing paternity will be entered unless a written objection is received within 30 days; and

(c) A written objection to the entry of an order has been timely received from a party.

(6) Notwithstanding the provisions of subsection (5) of this section, the administrator:

(a) Shall certify the matter to court:

(A) Within 30 days of receipt by the administrator of a timely written objection to the entry of an order by a party under subsection (5)(c) of this section;

(B) When a party requests certification in writing after the administrator has received a party's written denial of paternity if at least 120 days have elapsed from receipt of the denial; or

(C) Upon receipt of blood test results with a cumulative paternity index of less than 99; and

(b) May certify the matter to court at any time under any other circumstances.

(7) If the blood tests conducted under ORS 109.250 to 109.262 result in a cumulative paternity index of 99 or greater, evidence of the tests, together with the testimony of the parent, shall be a sufficient basis upon which to establish paternity and the administrator may enter an order declaring the alleged father as the legal father of the child unless a party objects in writing to the entry of the order. The testimony of the parent may be presented by affidavit.

(8) Prior to certification to court, the administrator may attempt to resolve the issue of paternity by discovery conducted under the Oregon Rules of Civil Procedure. Unless otherwise specifically provided by statute, the proceedings shall be conducted under the Oregon Rules of Civil Procedure.

(9) When, in accordance with subsection (6)(a)(A) of this section, a party objects to the entry of an order and the blood tests conducted under ORS 109.250 to 109.262 result in a cumulative paternity index of 99 or greater, notwithstanding the party's objection,

evidence of the tests, together with the testimony of a parent, is a sufficient basis upon which to presume paternity for purposes of establishing temporary support under this section. The court shall, upon motion of any party, enter a temporary order requiring the alleged father to provide support pending the determination of parentage by the court. In determining the amount of support, the court shall use the formula established under ORS 25.275. [1979 c.431 §7; 1983 c.709 §44; 1985 c.671 §38; 1989 c.566 §6; 1991 c.484 §2; 1993 c.596 §36; 1995 c.514 §13; 1995 c.609 §2; 1999 c.80 §28]

416.435 Certification of paternity issue to circuit or juvenile court; trial. (1)

Except as provided in subsection (2) of this section, when a response denying paternity and requesting a hearing is received pursuant to ORS 416.415 (3), or paternity is a valid issue as determined by the administrator under ORS 416.430, the certification to the circuit court shall be to the court in the judicial district where the parent or dependent child resides.

(2) Notwithstanding subsection (1) of this section, if there is an Oregon juvenile court case regarding the dependent child, the matter may be certified to the county that has jurisdiction of the juvenile court case.

(3) The certification shall include true copies of the notice and finding of financial responsibility, the return of service, the denial of paternity and request for hearing and any other relevant papers.

(4) The court shall set the matter for trial and notify the parties of the time and place of trial.

(5) If paternity is established, the monthly support and the amount of past support to be ordered may be established under ORS 416.427. [1979 c.421 §6; 1985 c.671 §39; 1989 c.811 §8; 1991 c.519 §5; 1995 c.514 §10; 2003 c.572 §17]

416.440 Filing order with court; order effective as circuit court judgment. (1)

The documents required to be filed for purposes of subsection (2) of this section include all the following:

(a) A true copy of any order entered, filed or registered by the administrator or administrative law judge pursuant to ORS 416.400 to 416.465 or ORS chapter 110.

(b) A true copy of the return of service, if applicable.

(c) A separate statement containing the information required to be contained in a judgment under ORS 18.042 (2).

(2) The documents described under subsection (1) of this section shall be filed in the office of the clerk of the circuit court in the county in which either the parent or the dependent child resides or in the county where the court order was entered if the administrative order is an order modifying a court order. Upon receipt of the documents, the clerk shall enter the order in the register of the circuit court, shall note in the register that the order creates a lien and shall make the notations required by ORS 18.075 in the separate record maintained under ORS 18.075 (3).

(3) Upon entry in the register under subsection (2) of this section, the order shall have all the force, effect and attributes of a judgment of the circuit court, including but not limited to:

(a) Creation of a judgment lien under ORS chapter 18; and

(b) Ability to be enforced by contempt proceedings and pursuant to ORS 18.252 to

18.993.

(4) Notwithstanding subsection (3) of this section, an administrative order modifying a court order shall not become effective until reviewed and approved by the court under ORS 416.425 (10).

(5) Notwithstanding subsections (2) and (3) of this section, the entry in the register of an order of the administrator or administrative law judge does not preclude any subsequent proceeding or remedy available under ORS 416.400 to 416.465.

(6) A court or administrative order of another state may be filed, or if appropriate, registered, pursuant to this section for the purposes of ORS chapter 110. Notwithstanding any other provision of this chapter, an order of another state registered pursuant to ORS 110.405, 110.408 and 110.411 may not be modified unless the requirements of ORS 110.432 are met. [1979 c.421 §9; 1983 c.696 §20; 1985 c.671 §39a; 1989 c.566 §4; 1989 c.768 §§10,13; 1991 c.519 §6; 1995 c.608 §7; 2003 c.75 §89; 2003 c.116 §14; 2003 c.576 §212; 2005 c.568 §30]

416.443 Reopening issue of paternity; order. (1) No later than one year after an order establishing paternity is entered under ORS 416.440 and if no genetic parentage test has been completed, a party may apply to the administrator to have the issue of paternity reopened. Upon receipt of a timely application, the administrator shall order:

(a) The mother and the male party to submit to parentage tests; and

(b) The person having physical custody of the child to submit the child to a parentage test.

(2) If a party refuses to comply with an order under subsection (1) of this section, the issue of paternity shall be resolved against that party by an appropriate order of the court upon the motion of the administrator. Support paid before an order is vacated under this section shall not be returned to the payer. [1995 c.608 §43; 1999 c.735 §22; 2003 c.576 §213]

416.455 Authority of administrator and administrative law judge; rules. (1) In any individual case, commencing with the payment of public assistance, with the application for enforcement services under ORS 25.080 by an individual not receiving public assistance or upon receipt of a written request for enforcement of a support obligation from the state agency of another state responsible for administering the federal child support enforcement program, the administrator may take action under ORS 416.400 to 416.465. The administrator and, as appropriate, the administrative law judge, may establish, modify and terminate support orders, require health care coverage for dependent children, establish paternity and collect child support.

(2) The Department of Justice may make such rules as may be necessary or desirable for carrying out ORS 416.400 to 416.465. [1979 c.421 §12; 1985 c.671 §40; 1993 c.18 §101; 2003 c.73 §63a; 2003 c.75 §90]

416.460 Expeditious court hearings. The Supreme Court by administrative order shall provide, where necessary, for expeditious hearings on all matters referred to the circuit court pursuant to ORS 416.435 or 416.450. [1979 c.421 §13]

416.465 Relief from compliance with order. The court may, upon such terms as may be just at any time within one year after notice thereof, relieve a parent from an administrative order taken against that parent because of mistake, inadvertence, surprise or excusable neglect. [1979 c.421 §15]

Selected Administrative Rules and Regulations Governing the Child Support Division

137-055-3020

Paternity Establishment Procedures

For purposes of this rule, the following definition applies:

- (1) “Marital Presumption” means the presumption in ORS 109.070 that a man married to a mother of a child at the time of conception or at the time of birth of a child is the biological father of the child.
- (2) When a case involves a child who is not yet born, the administrator will take no action to establish paternity or to provide locate services until such time as the child is born.
- (3) (a) In all cases in which a child was conceived in Oregon, the administrator will initiate legal proceedings to establish paternity under ORS chapter 109 or ORS chapter 416.
(b) Except for proceedings filed under ORS chapter 109, past support will be established as provided by ORS chapter 416 and OAR 137-055-3220.
- (4) When the administrator initiates legal action to establish paternity, if the child was born in this state, the administrator will file the Notification of Filing of Petition in Filiation Proceedings with the Center for Health Statistics.
- (5) In applying the marital presumption of paternity, the administrator will follow the law in effect at the time the child was born.
- (6) The administrator will handle disputes to the presumption of paternity under ORS 109.070 in the following manner:
 - (a) For children born before January 1, 2006, where paternity was established by conclusive presumption, the administrator will provide notice to the parties that:
 - (A) The parties have the right to challenge paternity under ORS 109.070 by filing a petition in the circuit court;
 - (B) The administrator will delay any initiated support action for 30 days;
 - (C) If a party provides proof within 30 days that he/she filed a petition, the administrator will suspend the support action pending the outcome of the court’s decision.
 - (D) If no proof is received within 30 days that a party has filed a petition, the administrator will proceed with the legal action to establish support.
 - (b) For children born at any time where paternity was established by disputable presumption, the administrator will seek to establish paternity against the man named by the mother to be the most likely alleged father except as provided in sections (7) and (8).
- (7) If the husband and mother are still married and the husband is on the child’s birth record:
 - (a) If only one party disputes paternity, the administrator will give notice to the parties as provided in subsection (6)(a) and proceed with the legal action to establish support if no

petition is filed within 30 days.

(b) If both the husband and mother dispute the child's paternity, the administrator will order the husband, mother and child to appear for parentage testing.

(8) If the husband and mother are still married, no father is listed on the birth record, and the mother names another man as the father of the child, the administrator will provide notice and an opportunity to object to the husband.

(a) If an objection is received from the husband within 30 days of the date of the notice, an action to establish paternity will be initiated against the husband.

(b) If no objection is received from the husband within 30 days of the date of the notice, an action to establish paternity will be initiated against the most likely alleged father named in the mother's paternity affidavit.

(9) In all cases in which the mother states that more than one man could be the biological father of the child and parentage tests have excluded a man as the father of the child, the following provisions apply:

(a) If there is only one remaining untested possible biological father, that man is constructively included as the father by virtue of the other man's exclusion as the father.

(b) If there are more than one remaining untested possible biological fathers, the administrator will initiate action against each man, either simultaneously or one at a time, to attempt to obtain parentage tests which either exclude or include the man.

(10) In all cases in which the mother states that more than one man could be the biological father of the child and parentage tests have included a man as the father of the child at a cumulative paternity index of at least 99, any other untested possible father(s) will be considered to be constructively excluded by virtue of the first man's inclusion.

[remaining sections omitted]

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 416.430

Effective Date: July 3, 2006

137-055-3100

Order Establishing Paternity for Failure to Comply with an Order for Parentage Testing

(1) In an action to establish paternity initiated pursuant to ORS 416.415, the administrator may serve simultaneously the Notice and Finding of Financial Responsibility and an administrative order for parentage tests.

(2) An administrative order for parentage tests may require either the mother of the child(ren) in question or a person who is a possible father of the child(ren) to file a denial of paternity in order to receive a parentage test, or it may allow testing prior to a the party filing a responsive answer to the allegation of paternity.

(3) The administrator will enter an order establishing paternity based upon a party's failure to appear for parentage testing, provided that all parties have been served with a Notice and Finding of Financial Responsibility and with an order requiring parentage tests if:

(a) The mother of the subject child(ren) has named the male party who failed to appear

for parentage tests in a sworn statement as a possible father of the child(ren) in question;
or

(b) A male party has claimed in a sworn statement to be the father of the child(ren) in question and the mother and her child(ren) have failed to appear for such tests.

(4) An order establishing paternity based on a failure to submit to parentage tests may be entered:

(a) Whether or not a responsive answer has been filed; and

(b) Whether or not corroboration exists to support a sworn statement of a party naming a male party as a father or possible father of the child(ren) in question, provided that the male party has either:

(A) Been named in a sworn statement by the mother as a possible father of the child; or

(B) Has named himself in a sworn statement as the father of the child.

(5) The provisions of this rule do not apply to the additional parentage tests described in OAR 137-055-3020(13) through 137-055-3020(16).

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 109.252 and 416.430

Effective Date: July 3, 2006

137-055-3240

Establishment of Arrears on Oregon Order Support Cases

(1) The administrator will establish arrears on support cases when the following conditions have been met:

(a) There has been an application for support enforcement services from a party in the case or there has been a mandatory referral for support enforcement services by an order of the court or because TANF cash assistance, Medicaid, foster care or Oregon Youth Authority services have been provided to the family;

(b) There is an Oregon support order or an order from another state has been registered in Oregon;

(c) The administrator has determined that there is a need to establish the arrears balance on the case because:

(A) The administrator has no record or an incomplete accounting case record;

(B) An establishment of income withholding has been requested by an obligor or obligee pursuant to ORS 25.381; or

(C) There is a reason which necessitates that the arrears on the case record be reestablished; and

(D) There has been a request for arrears establishment by a party.

(2) A party requesting establishment or reestablishment of arrears must furnish an accounting that shows the payment history in as much detail as is necessary to demonstrate the periods and amounts of any arrears.

(3) Where arrears had earlier been established, through a process which afforded notice and an opportunity to contest to the parties, the arrears from that period will not be reestablished except that if interest had not been included in the establishment, interest may be added for that period.

(4) The enforcing agency may establish or reestablish arrears by either:

(a) Use of the judicial process authorized under ORS 25.167; or

(b) Use of the administrative process authorized under ORS 416.429.

(5) Notwithstanding section (4) of this rule, if the arrears to be established are for spousal support arrears or for both child and spousal support arrears, the administrator will use the process in ORS 25.167.

(6) Upon completion of the arrears establishment process in subsection (4)(a) or subsection (4)(b) of this rule, the case record will be adjusted to reflect the new arrears amount.

(7) Notwithstanding any other provision of this rule, arrears may be established when:

(a) There is an Oregon court order and less than 180 days have elapsed since the date the order was entered; and

(b) Notice has been sent to the parties that the Child Support Program will enter arrears established in the order and arrears for the period from the effective date of the order to the date of the notice if no party requests, within the 60-day period following the date of the notice, that the arrears be established under the process found in ORS 25.167 and 416.429.

(8) If no party, under section (7) of this rule, responds within 60 days of the notice to request arrears be established under the process found in ORS 25.167 and 416.429, the amount of the arrears under section (7) of this rule will be the amount of arrears added to the case record.

(9) Arrears for a child attending school as defined in OAR 137-055-5110, will be as set forth in OAR 137-055-5120.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.015, 25.167, 416.429

Effective Date: January 3, 2006

137-055-3280

Administrative Law Judge Order Regarding Arrears

(1) If a party objects to the enforcement of an order under ORS 416.429 on the basis that the amount of the arrears are incorrect, an administrative law judge may determine the correct amount of the arrears, if any, and issue an order enforcing both the newly determined arrears and the current support obligation.

(2) The amount of arrears as stated on the Notice of Intent to Enforce an Order issued under ORS 416.429 will be presumed to accurately state the arrears. The presumption may be rebutted by evidence of errors in calculation, by a showing that payments were made for which credits were not appropriately recorded, or any other evidence which demonstrates that the arrears amount sought is incorrect.

(3) An administrative law judge may enter an order providing for the enforcement of current support only, pending further proceedings to determine the correct amount of arrears.

Stat. Auth.: ORS 180.345 and 416.455

Stats. Implemented: ORS 416.429

Effective Date: January 3, 2006

137-055-3360

Entering of Administrative Orders in the Register of the Circuit Court

An administrative order under ORS 416.400 to 416.470 must be entered in accordance with the requirements of this rule:

- (1) If the administrative order establishes support or paternity and the child is not residing in a state financed or supported residence, shelter or other facility or institution (see ORS 416.417), the order must be entered in the circuit court in the county in which the child, or either parent of the child, resides.
 - (2) If the administrative order establishes support or paternity and the child is residing in a state financed or supported residence, shelter or other facility or institution (see ORS 416.417) or resides out of state, the order must be entered in the circuit court in the county in which the obligor resides.
 - (3) If the administrative order is one that modifies an underlying support order or if there is any previous Oregon order entered in circuit court, the order must be entered in the circuit court in the same county as the underlying support order.
 - (4) If there is a judicial proceeding pending at the time of finalizing an administrative order establishing support or paternity, the administrative order must be entered in the circuit court in the same county as the pending judicial proceeding and must be entered under the pending court case number.
 - (5) Notwithstanding any other provision of this rule, nothing in this rule precludes filing liens in other Oregon counties pursuant to ORS 18.320 or transferring judgments pursuant to ORS 25.100 or 107.449.
- Stat. Auth.: ORS 180.345; ORS 416.455
Stats. Implemented: ORS 416.440
Effective: October 1, 2004

137-055-3420

Periodic Review and Modification of Child Support Order Amounts

- (1) For the purposes of this rule, the following definitions apply:
 - (a) “Determination” means an order resulting from a periodic review which finds that the current order of support is in “substantial compliance” with the Oregon guidelines.
 - (b) “Guidelines” means the formula, the scale, and related provisions in OAR 137-050-0320 through 137-050-0490.
 - (c) “Periodic Review” means proceedings initiated under ORS 25.287.
 - (d) “Review” means an objective evaluation by the administrator of the information necessary for application of the guidelines to determine:
 - (A) The presumptively correct child support amount; and
 - (B) The need to provide in the order for the child’s health care needs through health care coverage or other means, not to include Medicaid, regardless of whether an adjustment in the amount of child support is necessary.
 - (e) “Substantial compliance” means that the current support order is within at least 15 percent or \$50, whichever is less, of the presumptively correct child support amount as calculated using the guidelines. When making this determination, the 15 percent or \$50 formula will be applied to the currently ordered support amount.
- (2) For all child support cases receiving support enforcement services under ORS 25.080, the Child Support Program will annually notify the parties of their right to request a periodic review of the amount of support ordered.
- (3) The purpose of a periodic review is to determine, based on information from the parties and other sources as appropriate, whether the current child support order should be modified to assure substantial compliance with Oregon’s child support guidelines, or

to order health care coverage for the child(ren).

(4) The administrator may initiate a periodic review if a written request for periodic review is received from any party and 24 months have passed since the date the most recent support order took effect, or the date of a determination that the most recent support order should not be adjusted.

(5) The administrator must complete the determination that the order is in substantial compliance with the guidelines or complete the modification of the existing order within 180 days of receiving a written request for a periodic review, or locating the nonrequesting party(ies), if necessary, whichever occurs later.

(6) The administrator is responsible for conducting a periodic review in this state or for requesting that another state conduct a review pursuant to OAR 137-055-7190. As provided in ORS 110.429 and 110.432, the law of the state reviewing the order applies in determining if a basis for modification exists.

(7) Upon receipt of a written request for a periodic review, the administrator will notify the non-requesting party(ies) of the review in writing and provide a copy of the notice to the requesting party. The notice must advise the parties:

(a) Of the opportunity to provide information, with regard to themselves and the other party(ies) if known, which might affect the administrator's calculation of the presumed correct support amount under the child support guidelines, and that each party has 30 days from the date of the notice to provide such information in writing to the administrator;

(b) That the administrator will consider written information received from any party prior to calculating the presumed correct amount of support;

(c) That the administrator will not conduct a review or calculate a presumed correct child support amount until 30 days has passed since the date of the notice unless documentation or written information is received from the parties before the 30 days have passed; and

(d) That a modification to the support amount will affect only support owing on or after the date of service on the last non-requesting party.

(8) The administrator will notify the parties in writing of the presumed correct support amount under the child support guidelines. This notification:

(a) May be by service of a proposed determination that the existing order is in substantial compliance with the guidelines, or

(b) May be by service of a motion or petition to modify the current support order, pursuant to applicable statutes and administrative rules;

(c) Must advise the parties that each party has 30 days from the date of service of the notice to object to the determination or proposed modification in writing if they so choose, and that the order will not be final until at least the 30 day period has passed;

(d) Must include the request for hearing form for each of the parties if the administrator uses an administrative determination or motion form; and

(e) Must be sent to an adult child who has requested notification of any modification proceeding pursuant to ORS 107.108.

(9) If the administrator determines that the support order should be modified and there is an adult child on the case, the proposed modification will be a tiered order as defined in OAR 137-055-1020.

(10) If a party wishes to object to the proposed determination or modification, the party

must file a written request for hearing with the administrator or court before the 30 day period has passed.

(11) Upon receipt of a written request for hearing opposing the proposed determination or modification, the administrator will:

- (a) Review the case to determine whether the support should be recalculated and, if so, notify the parties of the new presumed amount;
- (b) Seek a consent order; or
- (c) Ensure that the matter is set for hearing if no other resolution is achieved; and
- (d) Send a copy of the proposed determination and hearing request to an adult child who has requested notification of any modification proceeding pursuant to ORS 107.108

(12) If no request for hearing is filed within the 30 day period, the administrator will submit the determination or modification of the support order to the circuit court for entry in the court register.

(13) If a hearing is held on a determination and the administrative law judge makes a finding that the order is not in substantial compliance with the guidelines, the administrative law judge must enter a modified order with the support amount that complies with the guidelines.

(14) An appeal under this rule will be as provided in ORS 25.287.

(15) No provision of this rule precludes the parties from obtaining the services of private legal counsel at any time to pursue modification of the support order pursuant to all applicable laws.

Stat. Auth.: ORS 180.345; 416.455

Stats. Implemented: ORS 25.080, 25.287, 107.135 , and 416.425

Effective Date: July 3, 2006

137-055-3430

Substantial Change in Circumstance Review and Modification of Child Support Order Amounts

(1) For purposes of this rule the definitions provided in OAR 137-055-3420 apply.

(2) Notwithstanding OAR 137-055-3420, proceedings may be initiated at any time to review and modify a support obligation based upon a substantial change in circumstances.

(3) The administrator will conduct a review based upon a request for a change of circumstances modification only when:

- (a) Oregon has jurisdiction to modify; and
- (b) The administrator receives a written request for modification based upon a change of circumstances and at least 60 days have passed from the date the existing support order was entered, except for those cases where a review is requested pursuant to paragraphs (3)(c)(H) or (I); and
- (c) At least one of the following criteria are met:
 - (A) A change in the written parenting time agreement or order has taken place;
 - (B) The financial or household circumstances of one or more of the parties are different now than they were at the time the order was entered;
 - (C) Social Security benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before October 23, 1999;

- (D) Veterans' benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before October 23, 1999;
 - (E) Survivors' and Dependents' Education Assistance benefits received by the child or on behalf of the child were not previously considered in the order;
 - (F) Since the date of the last order, the obligor has been incarcerated, as defined in OAR 137-055-3300;
 - (G) The needs of the child(ren) have changed;
 - (H) There is a need to provide health care coverage for the child(ren);
 - (I) A change in the physical custody of the child(ren) has taken place;
 - (J) An order is being modified to include a subsequent child of the parties; or
 - (K) A child no longer qualifies as a child attending school under ORS 107.108 and OAR 137-055-5110 and the order is being modified pursuant to ORS 107.108(10) as a tiered order. Tiered order has the meaning given in OAR 137-055-1020.
- (d) And the requesting party (if other than the administrator):
- (A) Completes a written request for modification based upon a substantial change of circumstances;
 - (B) Pursuant to ORS 416.425(6), provides appropriate documentation for the criteria in subsection (c) of this section showing that a substantial change of circumstances has occurred; and
 - (C) Completes a Uniform Income Statement or Uniform Support Affidavit.
- (4) Upon receipt of a written request for a review and modification, or upon the administrator's own initiative, the administrator will notify the non-requesting party(ies) of the review in writing and provide a copy of the notice to the requesting party (if any). The notice will inform the parties:
- (a) Of the opportunity to provide information, with regard to themselves and the other party if known, which might affect the administrator's calculation of the presumed correct support amount under the child support guidelines, and that each party has 30 days from the date of the notice to provide such information in writing to the administrator;
 - (b) That the administrator will consider written information received from any party prior to calculating the presumed correct amount of support;
 - (c) That the administrator will not conduct a review or calculate a presumed correct child support amount until 30 days have passed since the date of the notice unless documentation or written information is received from all parties before the 30 days have passed; and
 - (d) That a modification to the support amount will affect only support owing on or after the date of service on the last non-requesting party.
- (5) A request for review will be granted unless:
- (a) The conditions in section (3) have not been met; or
 - (b) The review was requested due to one of the criteria in paragraphs (3)(c)(A) through (3)(c)(G), and the order is in substantial compliance with the guidelines . The determination of substantial compliance will be made as outlined in OAR 137-055-3420(1)(e).
- (6) If the request for review is granted, the administrator will:
- (a) Initiate a motion or petition to modify the current support order, pursuant to

applicable statutes and administrative rules. If there is an adult child on the case, the proposed modification will be a tiered order as defined in OAR 137-055-1020;

(b) Advise the parties in writing of the presumed correct support amount under the child support guidelines. This notification:

(A) Must be by service of a motion or petition to modify the current support order, pursuant to applicable statutes and administrative rules;

(B) Must advise the parties that each party has 30 days from the date of service of the notice to object to the proposed modification in writing if they so choose, and that the order will not be final until at least the 30 day period has elapsed; and

(C) Must include the request for hearing form for each of the parties as provided in OAR 137-055-2160, if the administrator uses an administrative motion form.

(c) Send a copy to the adult child who has requested notification of any modification proceeding pursuant to ORS 107.108.

(7) If a party wishes to object to the proposed modification, the party must file a written request for hearing with the administrator or court before the 30 day period has passed.

(8) Upon receipt of a written request for hearing opposing the proposed modification, the administrator will:

(a) Review the case to determine whether the support should be recalculated and, if so, notify the parties of the new presumed amount;

(b) Seek a consent order; or

(c) Ensure that the matter is set for hearing if no other resolution is achieved.

(9) If a party submits, in writing, newly acquired information after a proposed modification has been served, the administrator will review the case pursuant to subsection (8)(a).

(10) If no request for hearing is filed within the 30 day period, the administrator will submit the modification of the support order to the circuit court for entry in the court register.

(11) If the request for review is denied, the administrator will notify the requesting party of the denial in writing within 30 days and inform the party of their right to file a motion for modification as provided in ORS 416.425. The administrator will advise the party on how to obtain the Oregon Judicial Department packet which has been prescribed for this purpose.

(12) An appeal under this rule will be as provided in ORS 416.427.

(13) No provision of this rule precludes the parties from obtaining the services of private legal counsel at any time to pursue modification of the support order pursuant to all applicable laws.

(14) If a request for review and modification is received because a change in the physical custody of the child(ren) has taken place, a party may also request a credit back to the date the change in physical custody took place in accordance with OAR 137-055-5510.

Stat. Auth.: ORS 180.345 and 416.455

Stats. Implemented: ORS 25.080, 25.287, 107.135, and 416.425

Effective Date: July 3, 2006